

LETTER OPINION
2006-L-09

March 2, 2006

Mr. Ronald J. Weikum
Grant County State's Attorney
PO Box 196
Carson, ND 58529-0196

Dear Mr. Weikum:

Thank you for the letter asking whether real property owned by a city job development authority is exempt from property taxation under N.D.C.C. § 57-02-08(3) as property belonging to a political subdivision. For the reasons stated below, it is my opinion that real property owned by a city job development authority is exempt from property taxation under N.D.C.C. § 57-02-08(3) as property belonging to a political subdivision.

ANALYSIS

A city job development authority (JDA) may be formed under N.D.C.C. ch. 40-57.4 and has the authority to acquire, hold, improve, and dispose of real property.¹ It also has the authority to certify a tax levy and expend money raised by the tax for the purposes provided in the chapter.² The governing body of a city with a JDA is required to establish a city job development authority fund and levy a tax.³ The funds raised, together with other revenues of the JDA, are deposited in the fund and may be expended for reimbursing members of the board of directors for expenses and in carrying out the powers and duties of the JDA.⁴ Chapter 40-57.4, N.D.C.C., is silent about using the funds of a JDA to pay property taxes.

In a 1988 letter issued by this office, it was determined that city JDA mill levy funds could not be used to pay real estate taxes and special assessments levied on real estate owned by a city industrial development corporation because there was no authority to do so under N.D.C.C. ch. 40-57.4.⁵ However, I found no North Dakota Supreme Court cases or opinions from this office specifically addressing whether the real property owned by a JDA itself is exempt from real property taxation. To determine whether JDA real property is

¹ N.D.C.C. § 40-57.4-03(5).

² N.D.C.C. § 40-57.4-03(6).

³ N.D.C.C. § 40-57.4-04.

⁴ *Id.*; see also N.D.C.C. §§ 40-57.4-02 and 40-57.4-03.

⁵ N.D.A.G. Letter to McLean (Jan. 21, 1988).

exempt from taxation under N.D.C.C. § 57-02-08(3) requires analyzing whether a JDA is a political subdivision within the meaning of that provision.

Although the term “political subdivision” is defined a number of times throughout the North Dakota Century Code,⁶ it is not defined in N.D.C.C. ch. 57-02. However, the term “political subdivision” is defined several times in the code⁷ in such a way as to directly or indirectly include a city or county job development authority. See, e.g., N.D.C.C. § 11-37-01 (political subdivision in chapter on commerce authorities means any county, city, or other unit of local government and the “term includes a job development authority created under chapter 11-11.1 or 40-57.4”); N.D.C.C. § 54-60.1-01 (political subdivision in chapter dealing with business incentives means “a unit of local government in this state which has direct or indirect authority to grant a business incentive”);⁸ N.D.C.C. § 57-15-28.1 (for purposes of this section providing exceptions to tax levy limitations, “political subdivision’ has the same meaning as in section 32-12.1-02”). Section 32-12.1-02(6)(a), N.D.C.C., provides that a political subdivision “[i]ncludes all counties, townships, park districts, school districts, cities, public nonprofit corporations, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes” In a 1994 opinion issued by this office, provisions in N.D.C.C. ch. 32-12.1, dealing with indemnification for employees and officers of political subdivisions, were construed to include board members of city JDAs.⁹

⁶ See North Dakota Century Code General Index, p. 263 (Replacement Volume 14, 2005).

⁷ See N.D.C.C. § 1-02-02 (“Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.”).

⁸ See N.D.C.C. § 40-57.4-03(10) and (11) (authorizes city JDA to make grants or other financial commitments to develop jobs and enhance economic development).

⁹ See N.D.A.G. 94-L-113.

Similarly, the existence and application of the powers of city and county JDAs have been analyzed in the same way as those of a political subdivision, and, like traditional political subdivisions, JDAs have been deemed to serve a public purpose.¹⁰

In other opinions issued by this office for other purposes, JDAs have been variously likened to political subdivisions¹¹ and described as agencies of political subdivisions¹² or alter egos¹³ of political subdivisions.

Thus, throughout the years, JDAs have alternatively fit under certain definitions of political subdivisions, have been likened to political subdivisions, or have been described as agencies or alter egos of political subdivisions. JDAs are funded by property tax levies and other revenues, serve a public purpose, and are created by cities or counties under applicable provisions of state law. Furthermore, the use of the funds of a city JDA is set out in N.D.C.C. ch. 40-57.4 for specific purposes, and there is no mention in the chapter about payment of property taxes on any real estate that it may lawfully own.

Based on the foregoing considerations and authorities, I do not believe the Legislature intended that city JDAs pay property tax on any real property that they may own from the limited and restricted sources of funding available to them. Thus, I conclude that the

¹⁰ See, e.g., N.D.A.G. 2000-F-01 ("Like political subdivisions, city job development authorities and county job development authorities created under N.D.C.C. chs. 11-11.1 and 40-57.4 have only those powers expressly conferred upon them by the Legislature, or those necessarily implied from the powers expressly granted."). Further, "the objective of a job development authority is to use its financial and other resources to encourage and assist in the development of employment within the city or county. By enacting chapters 11-11.1 and 40-57.4, the Legislative Assembly has declared that the development of employment by a job development authority is a public purpose." N.D.A.G. Letter to Martin (Feb. 11, 1991).

¹¹ See N.D.A.G. 2004-L-08 ("Like political subdivisions and state agencies, a job development authority (JDA) created under N.D.C.C. ch. 11-11.1 is a creature of state statute and therefore possesses only those powers expressly granted to it by the Legislature or those necessarily implied from the powers expressly granted.").

¹² N.D.A.G. 96-L-205 ("All records of a JDA, as a governmental body or agency of a political subdivision, are public records, required to be open and accessible during reasonable office hours . . .").

¹³ See N.D.A.G. 2003-L-19 ("[T]his office has stated that a county library board is an alter ego of the county. *Id.* County libraries are, of course, created by the counties themselves. Similarly, city JDAs are created by cities. As such, a city JDA may be termed the 'alter ego' of the city that created it.").

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term "political subdivision" as used in the real property tax exemption statute includes a city JDA, and it is therefore my opinion that real property owned by a city job development authority is exempt from property taxation under N.D.C.C. § 57-02-08(3) as property belonging to a political subdivision.

Sincerely,

Wayne Stenehjem
Attorney General

jjf/pg

cc: James M. Vukelic, Grant County Assistant State's Attorney

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.¹⁴

¹⁴ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).